

PRELIMINARY AMENDMENT AND
RESPONSE TO RESTRICTION REQUIREMENT

09/600208

August 6, 2001

Page 2 of 3

REMARKS

Claim 25 is corrected to depend from claim 24 instead of itself. The amendment is made to overcome a typographical error, and is not related to patentability of the claim over prior art. Entry of the amendment is respectfully requested

Applicants hereby provisionally elect species (b) with traverse. Claims reading on the elected species are as follows: claims 19-23, 28-30, and 32-33. The provisional election is made with the understanding that claim 17 is considered generic and will be examined with the claims of elected species (b), and that claims 24 and 34-39 are not grouped into either species and thus will be examined with generic claim 17. Amended claim 25, which now depends from claim 24, is respectfully considered to be outside both species, and therefore examination of amended claim 25 is also requested.

The finding of lack of unity of invention under PCT Rule 13.1 is respectfully traversed. PCT Rule 13.2 states: "Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." There is a technical relationship among both species (a) and (b) identified by the Examiner involving a special technical feature, namely "an illumination optical system arranged in said illumination beam path for modifying an illumination diameter of an illumination beam of said microscope" as defined in claim 17. The

PRELIMINARY AMENDMENT AND
RESPONSE TO RESTRICTION REQUIREMENT

09/600208

August 6, 2001

Page 3 of 3

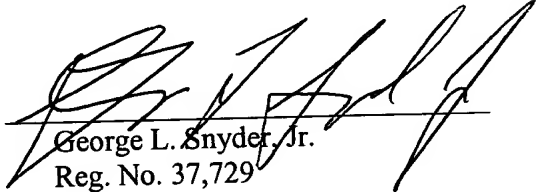
restriction requirement is based on differences among the various embodiments, and ignores the special technical feature shared by all embodiments as mentioned above. Thus, the finding that unity of invention is lacking is contrary to PCT Rule 13.2. It is noted that the International Search Authority and International Preliminary Examination Authority did not find a lack of unity of invention in the international application. Therefore, it is respectfully requested that the restriction requirement be withdrawn.

In view of the foregoing, withdrawal of the restriction requirement and prosecution of all pending claims is respectfully sought.

Respectfully submitted,

SIMPSON, SIMPSON & SNYDER, PLLC

By


George L. Snyder, Jr.
Reg. No. 37,729

GLS/

5555 Main Street
Williamsville, New York 14221
Telephone: (716) 626-1564
Facsimile: (716) 626-0366

Dated: August 6, 2001